IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 1347 of 2006

Date of Decision: 13.10.2006

Haryana Vidyut Prasaran Nigam Ltd. & Anr. ...Petitioners

Vs.

M/s Arya Nirman (Engineers, Consultants, Contractors and General Order Suppliers).

...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Vinod Sharma (Bhardwaj), Advocate, for the petitioners.

Mr.D.K.Singhal, Advocate, for the respondent.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 9.11.2005 passed by the learned Additional District Judge, Panchkula acting as Designated Authority, vide which he appointed Shri P.P.Bajaj, Chief Engineer, Punjab Health Systems Corporation, SCO no.126-127, Sector 8, Chandigarh, as Arbitrator to settle the dispute between the parties.

It is not in dispute that the respondent herein was allotted work on 8.3.2001 and said work was completed on 18.2.2002. The case of the petitioner is that the work was not completed within the stipulated period

and that full and final payment was made on 16.11.2003. After the receipt of the payment respondent made a representation on 5.11.2006 for the appointment of an Arbitrator to decide the dispute in terms of the agreement. As no action was taken on the said representation within a period of 30 days from the date of the said request an application was moved for the appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the Act). The Designated Authority adjudicated the matter and came to the conclusion that the petitioner was entitled to appointment of Arbitrator in view of the agreement as alleged and also held that the petition was within a period of limitation.

Learned counsel for the petitioner challenged the said order primarily on the ground that as envisaged under Clause 25-A of the Agreement was not adhered to it was not open for the Court to appoint an Arbitrator.

The contention of the learned counsel for the petitioner is that without following the procedure as envisaged under Clause 25-A if in pursuance to request for appointment of Arbitrator no appointment is made then the parties are left to adjudicate their claim by way of ordinary civil remedy.

The second contention of the learned counsel for the petitioner is that once the parties have agreed to procedure for appointment of Arbitrator and it was decided that the Arbitrator was to be the Chairman or nominee it was not open to the learned Designated Authority to appoint any other Arbitrator.

I have considered the arguments raised by the learned counsel

for the petitioner and find no force in the same. The arbitration agreement does not cease to exist merely on the failure of the parties to strictly follow the procedure for appointment. Once the dispute has arisen between the parties which was arising out of the agreement which contains an arbitration clause then the parties had a right to seek appointment of an Arbitrator. It is not in dispute that the respondent, in fact, made a representation for the appointment of Arbitrator on 5.11.2005 which was followed by subsequent representation. However, the petitioner chose not to take any action on the said representation. In view of this, the respondent was left with no alternative but to move the Designated Authority for the appointment of an Arbitrator as the parties had failed to act in terms of the agreement executed between the parties.

Learned counsel for the respondent relied upon the judgment of Hon'ble Supreme Court in **Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Anr. (2000) 8 Supreme Court Cases 151** to contend that if the authority competent to appoint an Arbitrator failed to do so within 30 days of the demand being made then the right to make appointment is not automatically forfeited. The appointment can still be made but before the other party moves the court under Section 11 of the Act. But once the party has moved the Court under Section 11 of the Act then the right to appoint an Arbitrator is with the Designated Authority. It is open to the Designated Authority to appoint named arbitrator or the independent arbitrator. In the present case, the designated authority has taken note of that fact and appointed the Chief Engineer as Arbitrator to adjudicate upon the matter.

However, the learned counsel for the petitioner contends that the judgment in **Datar Switchgears Ltd.'s case (supra)** is not applicable

to the facts of the present case, irrespective of the judgment it is the settled law that after the expiry of period of 30 days it is open to the Court to appoint an Arbitrator.

There is no illegality in the impugned order passed by the learned Additional District Judge which may call for interference by this court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

13.10.2006
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